

DOCUMENT RESUME

02093 - [A1252243]

[Reconsideration of Decision Regarding Contracting Officer's Determination of Nonresponsibility]. B-187193. May 2, 1977. 2 pp.

Decision re: United Office Machines; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (806).

Organization Concerned: General Services Administration.
Authority: 4 C.F.R. 20.

Protester requested reconsideration of a decision which found that a contracting officer's determination of nonresponsibility may properly be based on an agency audit report, even though the protester was not furnished with the report's underlying data. Protester contended that due process requires the opportunity to refute the report's underlying data. The prior decision is affirmed since the protester had the opportunity to comment on the report; the data were extracted from the protester's records; and the prior decision considered only the propriety of the reliance on the report. (Author/SC)

02093

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

M. Boyle
Proc F

FILE: B-187193

DATE: May 2, 1977

MATTER OF: United Office Machines - Reconsideration

DIGEST:

Request for reconsideration of decision--that found contracting officer's determination of nonresponsibility may properly be based on agency audit report even though protester was not furnished report's underlying data--is based on contention that due process requires opportunity to refute report's underlying data. Since (1) protester received report and had opportunity to comment in accord with Bid Protest Procedures, (2) data was extracted from protester's records, and (3) prior decision did not consider report's underlying data but considered propriety of the contracting officer's reliance on report, prior decision is affirmed.


Our decision in United Office Machines, 56 Comp. Gen. _____, B-187193, March 16, 1977, found in part that a General Services Administration (GSA) contracting officer's determination of nonresponsibility for lack of tenacity and perseverance may properly be based on conclusions stated in a GSA audit report even though (1) the underlying data is not reviewed by the contracting officer or the protester, and (2) default on prior contracts based on those conclusions is presently under appeal before the GSA's Board of Contract Appeals.

United Office Machines (UOM) requests reconsideration of that portion of our decision, contending that mere allegations of consistent failure to meet time of delivery contractual requirements stated in a GSA audit report, without any supporting evidence, cannot provide the basis for denial of UOM's protest. UOM argues that due process before any judicial tribunal requires an opportunity for defense against specific transactions or occurrences; the party refusing to supply the specifics of an allegation must suffer the results of the refusal.

B-167193

Our decision reviewed the contracting officer's determination of nonresponsibility to ascertain whether it was reasonable based on the information then available to the contracting officer. The record showed that a report on the audit of UOM contracts dated March 17, 1976, from GSA's Office of Audits, provided the basis for the contracting officer's belief that UOM consistently failed to timely deliver contractual requirements. The report's data was extracted from UOM's records. UOM was furnished a copy of that report and provided an opportunity to comment on it in accord with our Bid Protest Procedures, 4 C.F.R. part 20 (1976). Based on the record before our Office, we found that the contracting officer's reliance on information in that report was not unreasonable. As noted in the decision, whether the report's underlying data will ultimately be found to properly support the report's conclusion is an issue for resolution by the GSA's Board of Contract Appeals on appeal of the default terminations.

Since there has been no showing that our decision of March 16, 1977, was in error as a matter of law or fact, it is affirmed.


Deputy Comptroller General
of the United States